

Remarks

By this amendment claims 1, 21-24, 26, 28 and 30-35 are amended. Claims 1, 7-14, 21-28 and 29-35 are pending. Support can be found in the specification as filed, in particular as found in the previous claim set and as described below. No issue of new matter arises.

Sequence Compliance

This reply includes on its first page a formal instruction to enter the Sequence Listing previously filed and entered. Reconsideration and withdrawal of this objection are respectfully requested.

Specification/Informalities

Applicants respectfully observe that this issue is not presented as an objection or rejection. Nevertheless amendments made to claim 1 above appear to render this issue moot. If additional response is deemed proper by the Examiner, Applicants respectfully request that this issue be clarified as a rejection which can be appealed or as an objection where the petition process would be appropriate.

Claim Objections

Claims 21, 26, 28 and 30-35 are amended in general accordance with the Examiner's suggestions. Reconsideration and withdrawal of these objections are respectfully requested.

Rejections Under § 112, second paragraph

Claims 1, 7-14, 21-28 and 30-35 were rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. The Office Action based a first aspect of this rejection on the recitations in claim 1 relating to percent homologies. The present claim 1 does not include this language. Reconsideration and withdrawal of this rejection are respectfully requested.

The Office Action based a second aspect of this rejection on the recitations in claim 33 relating to "T". The objected to language is no longer present in claim 33. Reconsideration and withdrawal of this rejection are respectfully requested.

Rejections Under § 112, First Paragraph

Claims 1, 7-14, 21-28 and 30-35 were rejected under 35 U.S.C. §112, first paragraph as allegedly lacking adequate written description. The Office Action based a first aspect of this rejection on the recitations in claim 1 relating to percent homologies. The present claim

1 does not include this language. Reconsideration and withdrawal of this rejection are respectfully requested.

The Office Action based a second aspect of this rejection on the recitations in claim 34 relating to “T”. The objected to language is no longer present in claim 33. Reconsideration and withdrawal of this rejection are respectfully requested.

Provisional Double Patenting Rejection

Claims 1 and 7-13 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Applicants respectfully submit that the claims of the present application may not be in final form. No claim has been indicated to be allowable. Furthermore, claims 14, 21-28 and 30-35 are not included in this rejection. Applicants propose to take appropriate action to remove this rejection if it still exists at the time when the Office indicated that allowable claims are present in the application.

Double Patenting Rejection

Claims 1, 9, 12-14, 21, and 25-28 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 2-5, 8, and 10-18 of US Patent 7,202,059 (the '059 patent) in view of Dörschug (US Patent 6,875,589) and Schmid (US Patent 5,919,895).

At page 14, numbered paragraph 21, the Office Action presents the current claim status.

“Status of the claims:

- Claims 1, 7-14, 21-28, and 30-35 are pending.
- Claims 1, 7-14, 21-28, and 30-35 are rejected.
- No claim is in condition for allowance.”

Applicants respectfully submit that since no claims are deemed to be in condition for allowance, the claims of the present application may not be in final form. Furthermore, claims 7, 8, 10, 11, 22-24 and 30-35 are not included in this rejection. A terminal Disclaimer applies to the application, not just to the claims then current. Thus filing a terminal disclaimer at this time is deemed to be premature. Applicants propose to take appropriate action to remove this rejection if it still exists at the time when the Office indicated that allowable claims, e.g., claims in final form are present in the application.

Conclusion

In view of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of all pending rejections. Applicants respectfully submit that the application is now in condition for allowance and request prompt issuance of a Notice of

Allowance. Should the Examiner believe that anything further is desirable that might put the application in even better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

Fees

No fees not otherwise provided for are believed to be necessitated by the instant response. However, should this be in error, authorization is hereby given to charge Deposit Account no. 18-1982 for any underpayment, or to credit any overpayments.

Respectfully submitted,

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